

UNITED STATES OF AMERICA

Plaintiff,

v.

NIKOLAOS VASTARDIS,
EVRIDIKI MANAGEMENT, INC.
LIQUIMAR TANKERS MANAGEMENT
SERVICES, INC.

Defendants.

**UNITED STATES' OPPOSITION TO, AND CROSS-MOTION TO DISMISS,
PURSUANT TO RULE 12(b)(1) OR, IN THE ALTERNATIVE, RULE 12(b)(6),
MOVANTS' MOTION TO DECLARE THE AGREEMENT ON SECURITY
BREACHED BY THE UNITED STATES, FOR DAMAGES, TO DECLARE
CONTRACT VOID, AND TO DISBURSE FUNDS**

1. A breach of contract claim such as this one is a civil—not criminal—matter. Instead of instituting a civil action, Movants file a civil claim in the criminal case. Because it is a civil claim, the Federal Rules of Civil Procedure apply, and dismissal under Rule 12(b)(1) (lack of subject matter jurisdiction) or Rule 12(b)(6) (failure to state a claim) is warranted;
2. Subject matter jurisdiction is doubtful. Numerous courts have held that the type of agreement at issue is not a maritime contract. Because it is not, the Court and parties are left to look to the Tucker Act, which generally waives sovereign immunity for contract claims against the government, but only in instances when the United States acts in a *proprietary*—not a *sovereign*—capacity. Here the actions at issue are sovereign in

nature, and it appears that no court has jurisdiction;

3. Movants' claims—even taken at face value—do not demonstrate breach of the Agreement on Security, which is the contract at issue;
4. Even if jurisdiction did exist, and even if an actual breach of contract had occurred, Movants' request for damages must fail due to a lack of evidentiary support; but
5. Congress did provide a potential remedy, a separate civil action under APPS Section 1904, which provides: "A ship unreasonably detained or delayed by the Secretary acting under the authority of this chapter is entitled to compensation for any loss or damage suffered thereby." 33 U.S.C. § 1904(h). Movants reserve the right to bring a future Section 1904 claim, but do not do so now. *See* D.I. 51 (Movants' Mem.) at 5-6 n.3 & 7 n.4.

Dated: July 19, 2019

Respectfully submitted,

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